United Nations CAC/COSP/IRG/2015/3

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
31 March 2015

Original: English

Implementation Review Group
Sixth session
Vienna, 1-5 June 2015
Item 3 of the provisional agenda*
Performance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption

Assessment of the performance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption

Note by the Secretariat

I. Introduction

1. In its resolutions 1/1, 2/1 and 3/1, the Conference of the States Parties to the United Nations Convention against Corruption recalled article 63 of the Convention, in particular paragraph 7, according to which the Conference would establish, if it deemed it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention. In its resolution 3/1, the Conference adopted the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. The goals of the review process are set out in section IV of the terms of reference and include the promotion of the purposes of the Convention as well as the provision of information on its implementation.

2. The Conference established the Implementation Review Group as an open-ended intergovernmental group of States parties that operates under the authority of the Conference and reports to it. Pursuant to paragraph 44 of the terms of reference, the Group's functions are to have an overview of the review process in order to identify challenges and good practices and to consider technical assistance requirements in order to ensure effective implementation of the Convention. The thematic implementation reports serve as a basis for the Group's analytical work.

* CAC/COSP/IRG/2015/1.

V.15-02165 (E) 080415 090415

Please recycle

3. In order to assist the Group in carrying out its functions, documentation was prepared for each session of the Group, and oral updates were provided, on progress in the country reviews. In addition, consolidated reports were provided to the Conference at its fourth and fifth sessions, reflecting the action taken by the Group, measures to enhance the operation of the Mechanism and emerging practices with regard to the features of the country reviews. A background document on the impact of the Mechanism was also made available to the Conference at its fifth session.[1]

4. The Conference, in its decision 5/1, decided that the Group should begin promptly to collect, with the support of the secretariat, and discuss relevant information to facilitate the assessment of performance in accordance with paragraph 48 of the terms of reference, following the completion of the first review cycle, and that the Group should include in its future sessions an agenda item allowing for the discussion of such information. The secretariat invited States to submit contributions pursuant to the implementation of that decision prior to the fifth, resumed fifth and sixth sessions of the Group. The responses received are compiled in conference room papers CAC/COSP/IRG/2014/CRP.2 and CAC/COSP/IRG/2015/CRP.5.[2] Those contributions contained comments on cross-cutting themes as well as specific features of the country review process.

5. Following consideration of this item by the Group at its fifth and resumed fifth sessions, the secretariat was to provide a consolidated document that would draw on lessons learned, as well as provide ideas and suggestions for improvement based on the experiences of the secretariat and on the analysis of proposals made by States, for consideration at its sixth session.

II. Assessment of the performance of the Mechanism

A. Outcome of the country review process

6. Starting from the resumed second session of the Group, thematic implementation reports on the two chapters under review in the first cycle, as well as regional supplementary addenda, were developed and made available. With the growing number of completed country review reports, these documents were updated and refined in order to reflect trends in implementation and additional information, in accordance with guidance provided by the Group. The Group also adopted a template for executive summaries at its third session in order to enhance consistency in reporting. A more detailed publication on implementation was made available as a conference room paper to the Conference at its fifth session, and an analytical document on recommendations made in country review reports was prepared for the Group at its fifth session.

---

[1] CAC/COSP/2011/5, CAC/COSP/2011/8, CAC/COSP/2013/13, CAC/COSP/2013/14 and CAC/COSP/2013/16. These documents, as well as the regular progress reports to the Group, highlight lessons learned and practical measures taken to enhance the work of the Mechanism.

[2] The following States parties submitted contributions in response to a note verbale sent subsequent to the resumed fifth session of the Group: Belgium, Brazil, China, Egypt, Guatemala, Morocco, Philippines, Russian Federation and United States of America. A working paper submitted by Switzerland during the resumed fifth session of the Group is also referred to (CAC/COSP/IRG/2014/CRP.16).

7. Bearing in mind the guiding principles and characteristics of the Mechanism, in particular to assist States in effective implementation of the Convention and in identifying difficulties and good practices, the production of analytical knowledge and information on implementation constituted a key feature of considerations with regard to the preparation and improvement of these documents.

8. Proposals on the substantive aspects and outcomes of the review process included one State highlighting the need for more case law to be included in the executive summaries instead of statistical information. Some States noted that a clear distinction should be made in the second cycle between mandatory and non-mandatory provisions of the Convention. One State presented its view that the scope of articles to be reviewed in the second cycle should be narrowed, expressing concern that the breadth and range of articles covered in the second cycle would be cost- and time-intensive while yielding superficial results. Another State underscored the need for recommendations in the report to ensure the feasibility of appropriate follow-up action. One State also suggested that further compilation of information on international cooperation could be useful given the importance of the topic for the Convention's implementation, with discussions on specific aspects.

9. With regard to the finalization of the first cycle, several States stated that an end-of-cycle product would be required. The secretariat was preparing an analytical product in all official languages of the United Nations, based on the thematic findings of the review process, for the sixth session of the Conference. Some States proposed that a compilation or analysis of non-binding recommendations, guidelines on implementation or the main observations issued in country reviews could be prepared for discussion. Good practices were to be taken into account, as well as issues encountered and areas of focus for technical assistance and international cooperation.

10. Several States stressed the importance of following up on the recommendations contained in the country reports and executive summaries. The development of national action plans was noted in this regard, possibly with a work programme for implementation. Several proposals were made in order to structure reporting on follow-up to the observations, such as making short oral presentations to the Group or providing information to the secretariat on the implementation of observations. One State referred to regional experiences of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption and the Working Group on Bribery in International Business Transactions of the Organization for Economic Cooperation and Development. It was noted that the implementation of observations from the first cycle should continue to be discussed during the second cycle. One State indicated that the organization of regional thematic seminars on the outcome of the first cycle could be considered.

11. Many States had reported to the Group on their national implementation efforts and had provided updates on progress achieved during and following their reviews. Several of these noted that their country review process had been a catalyst for national anti-corruption reform efforts. Similarly, as the rate of ratifications and accessions had increased substantially after the establishment of the Mechanism, several new States parties reported on the benefits of undergoing the review process. A key outcome of States participating in the process itself was the opportunity to establish and/or enhance domestic coordination efforts or mechanisms with regard

to anti-corruption. The role and functions of focal points, whether individuals or agencies, were noted in this regard. Some States reported during sessions of the Group that this domestic coordination was also crucial when implementing the outcome and observations of the country review report. One positive by-product of undergoing country reviews had been the establishment or strengthening of national data collection and statistical systems.

12. In order to collect information on the implementation of observations contained in country review reports and executive summaries in a more systematic way, the secretariat invited States in a note verbale to provide it with information on measures taken in this respect. States were also invited to report on the impact of their participation in the work of the Mechanism, for instance good practices exchanged in the course of the review process.

B. Technical assistance

13. In its resolution 3/1, the Conference decided that the Implementation Review Group should be in charge of following up and continuing the work undertaken previously by the Open-ended Intergovernmental Working Group on Technical Assistance. Initially, the analysis of technical assistance needs had been based on the responses to the comprehensive self-assessment checklist; however, as a growing number of country review reports were finalized, the analysis of technical assistance needs was subsequently based on those reports and provided a more accurate picture of the needs identified for the implementation of the chapters under review.

14. The Conference, in its resolution 4/1, recommended that States parties identify their technical assistance requirements, preferably prioritized and related to the implementation of the provisions of the Convention examined during a given review cycle, and decided that the Review Group should consider, on the basis of the outcome of the review process and consistent with the terms of reference of the Review Mechanism, priority areas for the provision of technical assistance, as well as consolidated information on trends in requirements for and provision of technical assistance. The information collected through the country review reports provided the first global overview of technical assistance needs correlated with implementation challenges contained in the thematic reports.[3] This allowed the community of technical assistance providers, including the United Nations Office on Drugs and Crime (UNODC), to identify opportunities for the development of technical assistance tools and services relevant to a large number of States. While information on such needs and the analysis thereof was reflected in this documentation, several issues remained with regard to the follow-up and provision of technical assistance as an outcome of the reviews. Furthermore, the types and categories of technical assistance needs to be included in the comprehensive self-assessment checklist for the two chapters under review in the second cycle were to be discussed.

15. In their contributions, several States highlighted the need for technical assistance to be provided, upon request, in the completion of the self-assessment.

[3] CAC/COSP/IRG/2014/3.

During the discussions at the resumed fifth session, several States welcomed the technical assistance and capacity-building provided by UNODC and other partners. One State reported that technical cooperation had been provided by one of its reviewing States as a result of the country review process. The practice of convening donor meetings or holding specific discussions on technical assistance during the direct dialogue was also noted as useful. One State mentioned the limited provision of technical assistance as an outcome of the country reviews and suggested that providers could encourage States to integrate the review process in their overall anti-corruption efforts and ensure follow-up to needs identified through dialogue.

16. Several States suggested the development of action plans in order to improve technical assistance delivery. It was also highlighted that the identification of good practices, as well as the participation in the review process, had led to the emergence of a whole new generation of non-traditional technical assistance providers, mostly developing countries and countries with economies in transition, which often could provide solutions more adaptable to the systems and capacities of recipients of technical assistance. Two States indicated their preference for more information and increased discussion on concrete technical assistance needs in the framework of the Group. In the note verbale referred to in paragraph 12 above, States were also invited to provide information on technical assistance provided through the country review.

C. Comprehensive self-assessment checklist

17. Pursuant to its endorsement by the Conference at its third session and in accordance with the terms of reference of the Review Mechanism, the comprehensive self-assessment checklist was to be used by all States parties under review as the first step of the review process. Building on the experience gained in the country reviews, as well as on comments from several States parties over the course of the first year of reviews, an updated version of the software was developed to address and resolve technical issues and thus enhance the user-friendliness and effectiveness of the software. The updated version of the software facilitated the compilation of the self-assessment reports, as well as the analysis by governmental experts. The amendments streamlined the flow of questions so as to avoid duplication, and several generic questions of the self-assessment checklist were rephrased and further adapted to the specific requirements of the provisions under review. Moreover, questions relating to technical assistance were moved from the paragraph level to the article level, thus avoiding the repetition of identical technical assistance needs for the implementation of the various paragraphs of a given article, while maintaining the possibility of indicating such specific needs.

18. With a view to improving the comprehensive self-assessment checklist for the second cycle of the Mechanism, the secretariat solicited comments from States parties on a draft outline of the flow of questions and the proposed thematic structure of the revised self-assessment checklist for reviewing chapters II (Preventive measures) and V (Asset recovery) of the Convention (CAC/COSP/2013/3) and a draft for discussion of the revised self-assessment checklist for reviewing chapters II and V for the second cycle of the Implementation

Review Mechanism (CAC/COSP/2013/CRP.6). Responses received to the related information circulars were compiled in conference room paper CAC/COSP/IRG/2014/CRP.1 for the Group at its fifth session. Several States reiterated their comments or provided further comments during the fifth session and the resumed fifth session of the Group.

19. In order to provide the Group, for its consideration, with an updated version of the comprehensive self-assessment checklist in all official languages of the United Nations at the sixth session, the Group requested the secretariat, at its resumed fifth session, to continue collecting and consolidating comments and input from States on the draft checklist.

20. In response to this request, the secretariat incorporated the comments received into the draft for discussion of the revised self-assessment checklist for reviewing chapters II and V for the second cycle of the Mechanism. This updated draft was subsequently recirculated for further comments, and the responses received to the information circular are presented in CAC/COSP/IRG/2015/CRP.5.[4]

21. Several States welcomed the streamlining of the self-assessment checklist and highlighted their preference for merging further paragraphs in order to benefit from synergies within the checklist, while one State expressed its preference for keeping the formulations of the questions as they were during the first cycle.

22. With regard to the guidance boxes introduced in the self-assessment checklist, several States welcomed the amendments made in the checklist to highlight the fact that those were intended as recommendations only. One State indicated that the guidance provided for chapter II was too detailed, while there was not enough guidance provided for chapter V.

23. One State stated its preference for introducing a clear distinction between the different levels of obligation set forth in the Convention, while some States suggested restricting the scope of articles to be reviewed. In addition, several States expressed their preference for including questions on good practices in the self-assessment checklist. Some States drew attention to the fact that, in future, the draft self-assessment checklist should be available in all official languages of the United Nations.

24. Following receipt of such responses, the secretariat incorporated the comments into the draft self-assessment checklist, which is contained in CAC/COSP/IRG/2015/CRP.1, available in all official languages of the United Nations.

D. Process issues and funding

25. States agreed that the Implementation Review Mechanism had generally functioned well in its first cycle and that the guiding principles and characteristics of the Mechanism had been respected. Some States emphasized the

[4] The following States parties submitted comments on the updated version of the self-assessment checklist: Armenia, Australia, Belgium, Brazil, China, Egypt, Guatemala, Israel, Italy, Jamaica, Mexico, Morocco, Panama, Philippines, Russian Federation, Serbia, United Kingdom of Great Britain and Northern Ireland, United States and Yemen.

intergovernmental nature of the Mechanism, and some States noted that the terms of reference and guidelines did not require any amendment.

26. With regard to procedural aspects, some States suggested using more efficient alternatives for determining initial steps of the reviews. For instance, the secretariat had overhauled the lists of governmental experts posted on the UNODC website to improve efficiency and encouraged States under review in a given year to nominate their focal points early. Concerning the drawing of lots, several practical measures had already been taken by the Group. It was suggested that the drawing of lots be conducted by the Bureau prior to meetings of the Group in order to save time for deliberations of the Group on other issues and allow for consultations. It was further suggested that the Bureau could also conduct drawing of lots between sessions in order to mitigate the effects of potential unresponsiveness of States.[5]

27. Many States highlighted issues concerning the indicative timelines. Some States suggested the prompt nomination of focal points, the timely submission of all supporting documentation and the preparation of the self-assessment prior to being selected for review as measures to avoid delays in the review process. Other States underscored the importance of finalizing reports as soon as possible. Several States noted the usefulness of direct dialogue in the country review process.

28. It was noted that the time required to carry out translations was sometimes long and that the quality of the translations could be improved. One State suggested limiting documentation to be translated. Language issues posed serious challenges in a large number of reviews. The secretariat had taken measures to improve the timeliness and quality of translations but further efforts were to be undertaken, inter alia, by avoiding several rounds of translation over the course of a country review process.

29. Some States expressed the view that self-assessments and country reports should be published, while one State suggested officially launching and announcing the review process within States and publicizing the contact details of focal points. Furthermore, the sharing of information among States parties was to be encouraged, and States could request the secretariat to post their self-assessments and country reports under their country profile page on the UNODC website.

30. Several States stressed the importance of adhering to the guiding principles and the terms of reference, the intergovernmental nature of the Mechanism and the voluntary nature of country visits as means of direct dialogue, while others underscored the importance of integrating civil society and the private sector into the work of the country reviews and the Mechanism.

31. With regard to the financing of the Mechanism, several States indicated their preference for the current mixed funding, as they considered it vital to ensure the sustainability of the Mechanism; others stated that the Mechanism should be entirely funded through the regular budget of the United Nations to ensure its impartiality. The secretariat had sought to adopt cost-saving measures with a view to enhancing the effectiveness of the Mechanism while preserving the quality of the

[5] In its resolution 4/1, the Conference endorsed the practice followed by the Implementation Review Group with regard to the procedural issues arising from the drawing of lots. The secretariat prepared a compilation of procedural requirements and practice regarding the drawing of lots for the Conference at its fifth session (CAC/COSP/2013/16).

review process, and it provided regular reporting on resources and expenditures to the Group and the Conference of the States Parties.

III. Issues for further consideration

32. The Group may wish to consider recommending that the Conference at its sixth session endorse the use of the comprehensive self-assessment checklist, in all official languages of the United Nations, for reviews in the second cycle.

33. The Group may also wish to consider requesting the secretariat to continue collecting relevant information in order to facilitate the assessment of the performance of the Mechanism and prepare an updated and consolidated document for the sixth session of the Conference.

34. The Group may wish to make proposals or recommendations for consideration by the Conference concerning the conduct of reviews in the first and second cycles.